IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 6 of 2006
With
CIVIL APPLICATION No. 394 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT CO.OP.MILK MARKETING FEDRATION LTD. & 1 - Appellant(s)

Versus

ROYAL DAIRY LTD. & 1 - Defendant(s)

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Appearance :

SHRI K.S.NANAVATI, LEARNED SENIOR ADVOCATE WITH NANAVATI ASSOCIATES for Appellant(s) : 1 - 2.
SHRI S.N.SHELAT, LEARNED SENIOR ADVOCATE WITH MR B.S. PATEL for Defendant(s) : 1,
MR. E.E. SAIYED for Defendant(s) : 1,
SHRI MIHIR THAKOR, LEARNED ADVOCATE WITH SINGHI & CO for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 21/01/2006

ORAL JUDGMENT

This Appeal from Order arises out of an order passed

by the learned Presiding Officer of Fast Court No.1, Gandhinagar, below Exh.5 and Exh.25 Applications in Special Civil Suit No.2 of 2005, on 30/12/2005.

2. The said suit was preferred by the appellants against the defendants to challenge passing off action by the defendants by using trade mark **'Mother Dairy'**.

3. Learned Senior Advocate, Shri K.S.Nanavati appearing with Nanavati Associates for the appellants, learned Senior Advocate, Mr.Thakor, appearing with Singhi and Company for respondent No.1 and learned Senior Advocate, Mr.Shelat, appearing with Mr.B.S.Patel, for respondent No.2, have been heard.

4. The appellants have produced the paper-books containing copies of entire records of the trial Court.

5. Learned Senior Advocate, Mr.Nanavati, has mainly assailed the order on the ground that the order is a non-speaking and unreasoned order. He submitted that the order does not deal with the contentions raised by the learned Advocate for parties; does not deal with the documentary evidences produced by the parties, excepting reference to the arguments by learned

Advocate and reference to the documents. According to Mr.Nanavati, the order reflects non application of mind.

5.1 Apart form this, learned Senior Advocate, Mr.Nanavati has raised several other contentions before this Court, during his course of arguments, regarding buyers and users, pendency of suits preferred by Mother Dairy Foods and Vegetables Pvt. Ltd. and Mother Dairy Food Processing Limited. He has also taken this Court through voluminous documentary evidences produced by the plaintiffs, as well as, defendants in support of their respective cases and submitted that the trial Court has not considered any of these aspects.

6. Learned Senior Advocate, Mr.Thakor, has also taken this Court through the documentary evidences produced before the trial Court, projecting a different perspective in support of the case of defendant No.1.

7. Learned Senior Advocate, Mr.Shelat, submitted that the suit suffers from the defect of jurisdiction. He submitted that defendant No.2 operates from and at Junagadh. There is nothing to indicate any cause of action arising within the territorial jurisdiction of

Gandhinagar Court, and therefore, this Appeal may not be entertained.

8. Learned Senior Advocates, Mr.Thakor and Mr.Shelat conceded to the fact that the order in question does not deal with the contentions raised by both the sides but, according to them, the conclusions arrived at is correct.

9. Upon hearing the learned Advocates for the parties, it is crystal clear that the trial Court has not dealt with the contentions raised by rival sides in light of documents produced by them. The trial Court has not assigned reasons for arriving at the conclusions that are arrived at, and therefore, this Court is at loss to appreciate how the conclusion is arrived at. The trial Court ought to have dealt with the contentions raised by rival sides, so also, with the evidence led by rival sides while examining the question regarding the prima-facie case, balance of convenience, irreparable loss and jurisdiction. The trial Court has failed in doing so. The order therefore, suffers from the defect of being unreasoned order, if not arbitrary or without application of mind. The order, therefore, cannot be sustained and, deserves to be set aside.

10. The order impugned in this Appeal is, therefore, set aside. The matter deserves to be and is remanded to the trial Court for hearing it afresh and for recording afresh a reasoned verdict, without being influenced by its earlier verdict or this order. This Court, has restrained from making any observations on merits only to ensure that the verdict at the trial Court may now give its reasoned order and may not be influenced by any observations that may be made by this Court.

11. So far as the case of the plaintiff against defendant No.2 is concerned, a strong contention regarding jurisdiction has been raised. In this regard, learned Senior Advocate for the appellants, states that the plaintiff may be permitted to withdraw the suit against defendant No.2 reserving liberty and without prejudice to the rights of the appellants to file a fresh suit for same cause of action against the defendant No.2 before appropriate forum. The permission as prayed for, is granted with a direction to the appellants to file appropriate purshis before the trial Court in this regard.

12. So far as injunction part is concerned, in view of the

impugned order having been set aside and considering the voluminous record calling for consideration by the trial Court, the ad-interim ex-parte injunction granted by the trial Court, which is continued uptil now, cannot be permitted to continue.

13. In the result, the appeal is partly allowed. The order impugned is hereby set aside. The matter is remanded to the trial Court for a fresh hearing and a fresh verdict with reasons after affording parties a fresh hearing and permitting the parties to add or amend pleadings and to adduce evidence, as permissible under law. The trial Court shall decide the said application Exh.5 as expeditiously as possible. There shall be no order as to costs. Civil Application No.394 of 2006 is disposed of.

(A.L.DAVE, J.)

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